Supreme Court, U.S.
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No. 03 767 NOV 24 2003

In The
Supreme Court of the United States

CHARLOTTE ANN MIGNOT,

Petitioner,

v.

NEVILLE MASSIE, Warden,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Tenth Circuit Court of Appeals has applied a new standard for the issuance of a Certificate of Appealability in conflict with all other U.S. Circuit Courts of Appeals and decisions of this Court when it denied Petitioner's Application for a Certificate of Appealability.

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The Order of the Court of Appeals Denying Petitioner's Application for Certificate of Appealability is unpublished and appears at Appendix A to this Petition at App. 1-6. The Order of the U.S. District Court for the Northern District of Oklahoma denying Petitioner's Application for Certificate of Appealability is unpublished and appears at Appendix B to this Petition at App. 7-8. The Order and Judgment of the U.S. District Court for the Northern District of Oklahoma denying Petition for Writ of Habeas Corpus is unpublished and appears at Appendix C to this Petition at App. 9-21. The Summary Opinion of the Oklahoma Court of Criminal Appeals affirming the Judgment and Sentence of the trial court is unpublished and appears at Appendix D to this Petition at App. 22-25. The Order of the Oklahoma Court of Criminal Appeals Denying Petition for Rehearing and Directing Issuance of Mandate is unpublished and appears at Appendix E to this Petition at App. 26-28.

JURISDICTION

The Order of the Court of Appeals Denying Petitioner's Application for Certificate of Appealability was entered on August 25, 2003. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution and 28 U.S.C. § 2253(c) are set forth at Appendix F, infra, App. 29-30.

STATEMENT OF THE CASE

1. Procedural Background

On July 23, 1996, Johnny Ray Dunn ("Dunn") and Petitioner, Charlotte Ann Mignot ("Mignot" or "Petitioner"), were charged with Murder in the First Degree. The Information alleged that, on July 9, 1996, Mrs. Mignot and Dunn acted in concert to "effect the death of Larry Mignot [Petitioner's husband] by stabbing." Mrs. Mignot's case was tried to a jury from September 15 to 24, 1997. The jury returned a verdict finding Mrs. Mignot guilty of first degree murder and setting punishment as life imprisonment. On September 30, 1997, after testifying against Mrs. Mignot, Dunn received a 30-year sentence of imprisonment as part of a plea bargain with the state.

On November 26, 1997, Mrs. Mignot filed a motion for new trial, asserting, *inter alia*, prosecutorial misconduct in sponsoring the misleading and perjured testimony of co-defendant Dunn and failing to disclose leniency given to another key prosecution witness, Margie Lou Geiogamah ("Geiogamah"). The trial court denied Mrs. Mignot's motion for new trial and sentenced her to a term of life in prison on December 8, 1997, which she is presently serving in an Oklahoma correctional facility.

Mrs. Mignot timely instituted an appeal to the Oklahoma Court of Criminal Appeals ("OCCA") on December 17, 1997. On August 24, 1999, the OCCA affirmed the decision of the trial court in an unpublished Summary Opinion. (App. 22-24). Mrs. Mignot's Petition for Rehearing was subsequently denied on September 29, 1999. (App. 26-27).

Mrs. Mignot filed a petition for writ of habeas corpus in the United States District Court for the Northern District of Oklahoma ("district court") pursuant to 28 U.S.C. § 2254 on July 18, 2000. By Order and Judgment dated August 27, 2002, and filed and entered on the docket on September 3, 2002, the district court denied Mrs. Mignot's petition for habeas relief. (App. 9-21). Thereafter, Mrs. Mignot filed an Application for a Certificate of Appealability ("COA") with the district court pursuant to 28 U.S.C. § 2253(c) on October 3, 2002. The district court denied Mrs. Mignot's application for a COA on November 15, 2002. (App. 7-8). Mrs. Mignot reapplied for a COA with the Tenth Circuit Court of Appeals on November 21, 2002. The Court of Appeals denied Mrs. Mignot's application for a COA on August 25, 2003. (App. 1-6).

2. Factual Background

On July 9, 1996, Larry Mignot, Mrs. Mignot's husband, died as a result of numerous stab wounds. Mrs. Mignot had fallen asleep with her two daughters in their bedroom. After being awakened by the sounds of her husband screaming in another room of the house, Mrs. Mignot placed her daughters under the bed out of concern for their safety. Thinking she had heard someone exit the exterior door to the home, Mrs. Mignot opened the door to her daughters' bedroom to check on her husband. Just as she was about to reach for the door to the master bedroom

where Larry Mignot was located, Mrs. Mignot was grabbed from behind by a man who demanded money and held a sharp object to her neck. She gave the man cash from the kitchen and then heard another man state that he had found an ATM card belonging to the Mignots.

One of the men ordered Mrs. Mignot to get in the family truck, to drive him to an ATM machine, and to withdraw $400.00. After the ATM stop, the man directed Mrs. Mignot to drive and then later told her to pull the truck onto the side of the road. After stopping the vehicle, the other man appeared, pulled her out of the truck, and tied her hands behind her back. The two men beat Mrs. Mignot, hitting her several times in the face and elsewhere, and left. Mrs. Mignot was later able to flag down a passing motorist, Geiogamah, who drove her to a convenience store where a pay phone was available. Mrs. Mignot immediately called a neighbor to request that the neighbor go check on Larry and the children. The neighbor called the police and Mrs. Mignot was located and picked up by a police officer later that morning. Mrs. Mignot was later charged, along with Dunn, with the murder of her husband. Dunn reached a plea agreement with the state and testified against Mrs. Mignot. The case thus proceeded to trial against Mrs. Mignot only.

3. Proceedings in the State Trial Court

A. The Testimony of Margie Lou Geiogamah

Geiogamah testified that she was driving her car, with her daughter, a male, and another female in the car, when she picked up Mrs. Mignot on the morning of July 9, 1996. She was traveling from one recreation area to another when she saw Mrs. Mignot trying to flag down the car. The male in the car, Bobby Jones, exited the vehicle to talk to

Mrs. Mignot. Geiogamah further stated that Mrs. Mignot had "some kind of wire" tied around her arm and that "she looked clean." According to Geiogamah's account, Mrs. Mignot's hair was damp and she smelled of shampoo. Geiogamah drove Mrs. Mignot to a convenience store to get help and so that she could call to check on her daughters.

Although Geiogamah admitted to thirteen (13) felony convictions and one pending drug charge during Petitioner's trial, the state purposefully elicited direct testimony from Geiogamah that she was not receiving any form of plea bargain in exchange for her testimony against Mrs. Mignot. Notwithstanding the prosecutor's calculated sponsorship of that testimony, the state's charges against Geiogamah were dismissed in their entirety approximately one week after Mrs. Mignot was convicted. After learning of the dismissal of charges against Geiogamah, Mrs. Mignot moved for a new trial based in part on the state's failure to disclose a deal with Geiogamah. At the hearing on the motion, the following facts were established:

- On December 27, 1996, Geiogamah was stopped for speeding. Officers placed her under arrest for driving with a suspended license. Officers searched her purse and found drug paraphernalia that later tested positive for methamphetamine.

- On May 2, 1997, ten months after Larry Mignot's death, Geiogamah's attorney contacted Steve Sewell, lead prosecutor in the Mignot case, and informed him that Geiogamah was a potential witness. Geiogamah's attorney also informed Mr. Sewell that Geiogamah had felony drug charges pending against her. Upon reviewing Geiogamah's case file, Mr. Sewell learned that she was charged with felony possession of

methamphetamine, after numerous former felony convictions, and that the charges carried a *minimum* sentence of 20-years' imprisonment.

- A preliminary hearing conference was scheduled for July 9, 1997 in the Geiogamah case. A minute entry on the inside of the court file on the Geiogamah case reflected that, on July 9, 1997: **CASE PASSED TO 9-17-97 @ 1:30 P.M. FOR CONF. - BY AGMT. D TO TESTIFY IN J/T IN SEPT.** As Mrs. Mignot's trial was still underway on September 17, the Geiogamah conference was again passed to October 1, 1997.

- On October 1, 1997, just eight (8) days after the jury returned a verdict against Mrs. Mignot, the state's case against Geiogamah was dismissed. While Mr. Sewell equivocated when asked about the reasons for dismissal, testifying alternatively that the case against Geiogamah was not one that he would take to trial and that it was merely a "residue" case, he admitted that there were no legal problems with the case and no dismissal motions pending in the case at the time of dismissal. Notwithstanding the court file notation on July 9 that the Geiogamah case was passed because Geiogamah agreed to testify in a jury trial in September, Mr. Sewell characterized the dismissal of Geiogamah's case as "consideration after the fact."

- One week after the state's dismissal of her charges, Geiogamah spoke with Pamela Hamilton, a Tulsa County Jail inmate. The telephone conversation was tape recorded, as is the normal procedure for telephone calls placed to or from an inmate. The recording, which was played at the hearing, revealed that Geiogamah stated, "I got my charges

> dismissed. But I testified against that, umm, you know, that, uh, Charlotte Mignot." Pamela Hamilton testified about the conversation, stating that Geiogamah "just said that she got her charges dropped by testifying."

In connection with the motion for a new trial, Mrs. Mignot also requested that the court conduct an *in camera* review of the state's file to determine whether it contained any notations of agreements or promises of leniency to Geiogamah. The court denied that request, stating,

> I've heard the sworn testimony of the Assistant District Attorney, Mr. Sewell, who is handling both Ms. Geiogamah's case as well as Ms. Mignot's case. He's indicated that he never did . . . promise or agree with Ms. Geiogamah that he would give her any consideration *whatsoever* for her testimony.

The court also denied Mrs. Mignot's new trial motion. However, not only did Mr. Sewell admit under oath that the state did give Geiogamah "consideration after the fact," but the court's own notations in the court file indicated that, *before* Mrs. Mignot's trial, the Geiogamah case was passed in recognition of the understanding that Geiogamah was to testify against Mrs. Mignot in September.

B. The Testimony of Johnny Dunn

At trial, Dunn was the state's key witness. Dunn testified that he and Mrs. Mignot had discussed killing Larry Mignot. According to Dunn, the initial "plan" was to kill Larry Mignot with a gun purchased by Dunn. That plan was not implemented because "other persons involved never [came] through." Dunn stated that he walked into the master bedroom of the Mignot home where Larry

Mignot was sleeping, and stabbed him "three to four times." According to Dunn, Mrs. Mignot then entered the bedroom and stabbed Larry Mignot and cut his throat.

On cross-examination, Dunn repeatedly admitted that he is a liar and that he would say anything to protect himself. The state admitted in its brief to the OCCA that there were "legitimate questions as to the truthfulness of Dunn's testimony." The story ultimately told by Dunn at trial was dramatically different from previous versions of his account of the murder of Larry Mignot. Moreover, Dunn's trial testimony was contrary to the state's own forensic evidence. In short, between Larry Mignot's death and Mrs. Mignot's trial, Dunn gave drastically varying accounts of crucial elements of the victim's death. This was demonstrably due to the prosecution's chagrin with the implausibility of Dunn's initial story, and its consequent effort to align Dunn's testimony with the testimony anticipated from Ms. Geiogamah, for which the state had secretly promised leniency.

4. Proceedings in the Oklahoma Court of Criminal Appeals

Upon the trial court's denial of Mrs. Mignot's motion for a new trial, Mrs. Mignot filed a timely appeal in the Oklahoma Court of Criminal Appeals. In response, the state changed the position it had ardently held at the hearing on the motion for a new trial. Now, the state admitted in the Brief of Appellee that the dismissal of Geiogamah's felony drug charges was at least "in part due to the testimony [of Geiogamah against petitioner]" and that the non-disclosure of this evidence raises concededly "legitimate areas of concern." (App. 40). It thus became an undisputed matter of record that a promise of leniency

existed between the prosecutor and Geiogamah, notwithstanding the state's duplicitous affirmations to the trial court that no such promise had been made. (App. 32-34). Even with this revelation, the Oklahoma Court of Criminal Appeals denied Mrs. Mignot's appeal. (App. 22-24).

5. Habeas Proceedings in the District Court

Mrs. Mignot timely filed a Petition for Writ of Habeas Corpus on July 18, 2000. Briefing was completed with the filing of Mrs. Mignot's reply brief on November 9, 2000. In the habeas corpus proceedings, the state admitted that there was, in fact, a deal and that this deal was not disclosed. (App. 36) (the state's Response to Petition for Writ of Habeas Corpus at p. 6 states, "proper disclosure of the nature of the arrangement with witness Geiogamah was not made"), and (App. 38) (the state's Response to Petition for Writ of Habeas Corpus at p. 10 concedes the lack of a "prior disclosure of the deal with this witness").

In total disregard of the state's final capitulation to the existence of this secret deal that led to Petitioner's conviction, the district court entered its Order and Judgment denying Petitioner a Writ of Habeas Corpus on September 3, 2002, more than two years after Mrs. Mignot filed her Petition. (App. 9-21). It is the district court's Order and Judgment denying Petitioner's habeas relief which are the basis for Mrs. Mignot's desired appeal to the Tenth Circuit Court of Appeals.

6. Proceedings in the Tenth Circuit Court of Appeals

Mrs. Mignot applied for a COA with the Tenth Circuit Court of Appeals on November 21, 2002. That application

was denied nine (9) months later on August 25, 2003. In the Order Denying Petitioner's application for a COA, the Court of Appeals ruled that Petitioner still would not have shown a substantial denial of a constitutional right "[e]ven were [the court] to conclude that the State knowingly presented perjured testimony" in securing Petitioner's conviction. Although the court made reference to the "reasonable jurist" standard under *Miller-El v. Cockrell*, 537 U.S. 322, 123 S. Ct. 1029 (2003), (App. 3) it purported to apply this standard by stating that the "touchstone of the inquiry is whether [Petitioner] received a fair trial resulting in a verdict worthy of confidence." (App. 5, quoting *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)). As discussed more fully below, this analysis represents a brazen departure by the Tenth Circuit from this Court's well-established standard governing the determination of COA applications.

REASONS FOR GRANTING THE WRIT

Shortly after the district court denied Petitioner's application for a writ of habeas corpus and subsequent application for a COA, this Court decided *Miller-El v. Cockrell*, 537 U.S. 322, 123 S. Ct. 1029 (2003) which clarified and reiterated the well-established standard for the issuance of a COA. In denying the Petitioner's application for a COA, the Tenth Circuit side-stepped this standard, and applied a heightened standard unprecedented in COA proceedings. In so doing, the Tenth Circuit entered a decision in conflict with the decisions of other U.S. Courts of Appeals on the same important matter, and so far departed from the accepted and usual course of judicial proceedings on COA applications as to call for an exercise

of this Court's supervisory power pursuant to Rule 10(a) of the Rules of the Supreme Court of the United States.

Instead of conducting a threshold inquiry into the validity of Petitioner's constitutional claims to determine if reasonable jurists could find the district court's assessment debatable or wrong, as required by this Court's well-settled authority and most recently affirmed by *Miller-El*, the Court of Appeals simply concluded that the Petitioner "received a fair trial resulting in a verdict worthy of confidence." (App. 5). This analysis violated Petitioner's right to due process of law under the Fourteenth Amendment to the U.S. Constitution. The Tenth Circuit's approach is unprecedented for federal appellate review of a district court's denial of a COA, and abrogates the requirements of *Miller-El* and virtually the entire body of Supreme Court precedent on the point.

In light of the Court of Appeals' erroneous application of the standard for a habeas appeal rather than the standard for the issuance of a COA, the Court of Appeals did not assess what *Miller-El* and its predecessors require when deciding an application for a COA: Whether reasonable jurists could debate whether the habeas petition should have been resolved differently or that the issues are adequate to deserve encouragement to proceed further. Here, the judge who presided over the Petitioner's trial determined that if there were an undisclosed deal with the witness, a new trial would be required. At the time, however, the trial judge did not have before him the admissions made by the state in later proceedings that "proper disclosure of the nature of the arrangement with [the] witness . . . was not made" (App. 36), and that the state had failed to make "prior disclosure of the deal with [the] witness." (App. 38).

In failing to countenance the admonition of the trial judge that such conduct would compel a new trial, the Tenth Circuit disregarded the mandatory "reasonable jurist" test for granting a COA and went beyond a threshold determination of the merits of Petitioner's constitutional claims in contravention of the well-established standard most recently articulated in *Miller-El*. The Court of Appeals' ruling poses a potential for broad misapplication of the standard for issuance of a COA in the Tenth Circuit, subjecting habeas petitioners in the Tenth Circuit to materially different standards, and indeed higher standards for the issuance of a COA than in any other circuit in the country, which are irreconcilable with decisions of this Court and all other Courts of Appeals.[1]

If the side-stepping of jurisdictional limitations warned against in *Miller-El* and patent in this record is not condemned, then the increased risk of even subtler deprivations of due process in post-conviction proceedings

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[1] *See, e.g., St. Yves v. Merrill*, No. 03-1709, 2003 U.S. App. LEXIS 21067 at *3 (1st Cir. Oct. 17, 2003); *United States v. Gravette*, No. 03-6981, 2003 U.S. App. LEXIS 23337 at *3 (4th Cir. Nov. 17, 2003); *Cotton v. Cockrell*, 343 F.3d 746, 749-50 (5th Cir. 2003); *Morales v. Woodford*, 336 F.3d 1136, 1144 (9th Cir. 2003); *Zeigler v. Crosby*, 345 F.3d 1300, n.2 (11th Cir. 2003) (per curiam). *See also, Priester v. Vaughn*, 2003 U.S. Dist. LEXIS 18395 at *10-11 (E.D. Pa. June 3, 2003); *McGee v. Schomig*, No. 00 C 3497, 2003 U.S. Dist. LEXIS 18733 at *3-4 (N.D. Ill. Oct. 20, 2003); *Swartz v. Mathis*, No. C00-2065-LRR, 2003 U.S. Dist. LEXIS 20433 at *35-36 (N.D. Iowa Nov. 12, 2003). While earlier decisions in the Tenth Circuit demonstrate an appropriate application of the "reasonable jurist" standard (*see, e.g., United States v. Chavarria-Ahumada*, 65 Fed. Appx. 220, 222-223 (10th Cir. May 2, 2003)), Mrs. Mignot's case represents a dramatic departure by the Tenth Circuit from the accepted course of COA proceedings under this Court's controlling precedent.

will go undeterred in the Tenth Circuit. Without intervention by this Court, the Tenth Circuit will stay its course of requiring COA applicants to establish ultimate entitlement to relief on the merits before a COA will issue, thereby depriving applicants for a COA of the opportunity to pursue an appeal, and denying with impunity the rights of COA applicants in the Tenth Circuit to seek post conviction relief even where, as here, jurists of reason would certainly find the district court's assessment of those applicants' constitutional claims debatable or wrong. *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1040; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

The Court of Appeals' decision denying Mrs. Mignot's application for a COA has misapplied the holdings of this Court, most recently articulated in *Miller-El*, applicable to appeals from the denial of a petition seeking the issuance of a writ of habeas corpus. 28 U.S.C. § 2253(c)(2). By that decision, the Court of Appeals has improperly raised the standard for a COA which applies when prosecutors withhold evidence of deals made with witnesses. Application of this higher standard will result in due process violations not only as to Mrs. Mignot, but potentially for all citizens victimized by such prosecutorial abuses. Moreover, the rule announced here by the Tenth Circuit will provide incentive to prosecutors to withhold otherwise discoverable evidence with complete impunity. Petitioner had no obligation to demonstrate that she would ultimately prevail on the merits in order to be afforded a COA. Rather, Petitioner needed only to have demonstrated that "reasonable jurists could debate . . . whether the petition [for habeas relief] should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'"

Miller-El, 537 U.S. 322, 123 S. Ct. at 1039, (quoting *Slack*, 529 U.S. at 484); *Barefoot v. Estelle*, 463 U.S. 880, 893 and n.4 (1983); *Slack*, 529 U.S. at 484 (citing *Barefoot* standard and concluding that certificate should issue if reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); *Lennox v. Evans*, 87 F.3d 431, 433-34 (10th Cir.), cert. denied, 519 U.S. 1081 (1997), overruled on other grounds, *United States v. Kaufman*, 125 F.3d 1363 (10th Cir. 1997) (concluding that § 2253(c)(2) was enacted to codify the *Barefoot* standard).

That reasonable jurists could come to different conclusions about whether the district court should have granted Petitioner's habeas relief is irrefutable given that the presiding trial judge in the state court expressly subscribed to a mandate that would necessitate a new trial if he had known about the state's later admissions that there was a deal with Geiogamah, and that the deal was not properly disclosed to Petitioner. The trial judge specifically stated that if there was an undisclosed deal (which the state at that time denied) (App. 15, 32-33), Petitioner should "certainly . . . be granted a new trial." (App. 33).

1. Petitioner Made a Substantial Showing of the Denial of Her Constitutional Right to Due Process of Law by the State's Failure to Disclose its Pretestimonial Arrangement with a Key Prosecution Witness.

The state has taken varying, inconsistent positions throughout the state and federal proceedings in this case. Following Petitioner's trial, when the state dismissed unrelated charges against prosecution witness Margie Geiogamah, the state denied that there was any deal or arrangement with Geiogamah in exchange for her testimony

against Petitioner. (App. 15, 32-33). On direct appeal, faced with significant evidence of just such a deal and the fact that the prosecutor had elicited Geiogamah's false testimony that there was no deal, the state acknowledged that Petitioner had raised "legitimate areas of concern." (App. 40). Then, in the habeas proceedings, the state admitted that "*proper disclosure* of the nature of the arrangement with witness Geiogamah *was not made*," and recognized that there was no "prior disclosure of *the deal* with this witness." (App. 15, 36, 38, emphasis added). Petitioner submits that the state's admissions alone (albeit contradictory and late) establish that a certificate of appealability should have been issued. At the very least, the state's evolving admissions and its prior misrepresentations indicate that the issues presented by Petitioner are "adequate to deserve encouragement to proceed further," and give rise to a conclusion that reasonable jurists could find the district court's assessment of the Petitioner's claims debatable or wrong. *See Miller-El*, 537 U.S. 322, 123 S. Ct. at 1040; *Slack*, 529 U.S. at 484; *Lennox*, 87 F.3d at 433-34; *Barefoot*, 463 U.S. at 893 n.4.

Based directly upon the state's false representation that there was no deal with witness Geiogamah, the trial court denied Petitioner's motion for new trial. Specifically, the trial court concluded:

> "there was no specific plea bargain arrangement which took place between the State of Oklahoma and Margie Geiogamah, nor is there any evidence to convince me that there was some sort of tacit understanding that was never written down or that was never specifically agreed to by either the State, Ms. Geiogamah, or her lawyer, Mr. Elias. As such, sir, your Motion for New Trial will be overruled."

(App. 33-34). In determining that there was no deal, the trial court did not have before it the admission – subsequently made by the state – that "proper disclosure of the nature of the arrangement with the witness Geiogamah was not made" and that there was no prior disclosure of "the deal with this witness." Instead, the trial court had the misleading testimony of the prosecutor that there was no deal or arrangement with the witness.

The trial court's ruling made it clear that if the trial court had before it the admissions made by the state in the subsequent proceedings, the trial court would "certainly . . . [have] granted a new trial."

(App. 33). It is now undisputed that there *was* a deal and that the state's prior representations to the contrary were false.

But, in the trial court, the state denied the existence of the pre-testimonial arrangement with Geiogamah. (App. 15, 32-33). Petitioner respectfully submits that in light of the revelation of the precise evidence that the trial judge himself declared sufficient to warrant a new trial in his own court, reasonable jurists could find the federal district court's denial of habeas relief debatable or wrong. *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1040 (quoting *Slack*, 529 U.S. at 484). Indeed, the fact that the very trial judge who presided over Petitioner's case would have granted a new trial had he not been misled by the prosecution is *compelling* proof that the standard for issuance of a COA is met. Not only would hypothetically reasonable jurists find the district court's assessment of Petitioner's constitutional claims debatable or wrong (*id.*), but the actually reasonable presiding judge declared that the existence of a deal would mandate such a finding in order to protect the very "heart of the criminal justice system." (App. 33).

2. Petitioner Made a Substantial Showing of the Denial of Her Constitutional Right to Due Process of Law by the State's Solicitation of False Testimony from Prosecution Witness Johnny Dunn.

Petitioner presented in the OCCA and the federal district court significant evidence and argument establishing that the state solicited and presented false testimony through witness Johnny Dunn. The fact that the state presented Geiogamah's false testimony that she was not being given leniency by the state in exchange for her testimony against Petitioner also supports Petitioner's proposition that the state solicited false testimony from Johnny Dunn. The state's contradictory contentions, which ultimately led to its belated admission that there was a deal with Geiogamah, are also indicative of the state's attempts to support Petitioner's conviction by any means possible – regardless of whether it was obtained by the false testimony of Geiogamah and the lies of Dunn.

Moreover, the state's solicitation of Geiogamah's false testimony bolstered not only her credibility, but also the credibility of Johnny Dunn. That is because Geiogamah provided the *only* testimony which supported the belatedly conjured testimony of Dunn – whom the OCCA determined was "certainly a liar" – namely, that the Petitioner had showered. (App. 17, 23 at note 1). That testimony was concocted to explain the complete absence of physical evidence linking Petitioner with the crime, and to explain the fact that she was not covered in blood after allegedly having stabbed and cut the throat of her husband. On this material and crucial point, the state relied upon two witnesses who were concededly liars, and by withholding a "deal" made with one of those witnesses, obtained a conviction on that perjurious testimony.

The Tenth Circuit justifies its denial of Petitioner's application for a COA by finding a generally fair trial notwithstanding the state's sinister practice. The Tenth Circuit found:

> [T]he district court emphasized that the essence of Ms. Geiogamah's testimony was corroborated by other witnesses and evidence and that the jury had considerable reasons to doubt her credibility even without the disclosure of any agreement with the state. . . . [W]e see little room for doubt that, even considering the State's failure to disclose, Ms. Mignot nonetheless received a fair trial resulting in a verdict worthy of confidence. Even if our review left us with doubt, we perceive nothing to lead us to conclude that the OCCA's application of federal law was *unreasonable* given Ms. Geiogamah's obvious lack of credibility . . .

(App. 5, emphasis in original). Putting aside, for the moment, the fact that the reasonableness of the OCCA's application of federal law should not have been a consideration in determining Petitioner's COA application, this Court has held that a new trial is *required* if "the false testimony could . . . *in any reasonable likelihood* have affected the judgment of the jury(,)" even if Geiogamah's false testimony that she was not receiving a deal only went to her credibility. In *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173 (1959), this Court stated:

> *First*, it is established that a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment. The same

result obtains when the State, although not soliciting false evidence, allows it to go uncorrected when it appears.

The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend . . .

Second, we do not believe that the fact that the jury was apprized of other grounds for believing that the witness Hamer may have had an interest in testifying against petitioner turned what was otherwise a tainted trial into a fair one. . . . Had the jury been apprized of the true facts, however, it might well have concluded that Hamer had fabricated testimony in order to curry the favor of the very representative of the State who was prosecuting the case in which Hamer was testifying, for Hamer might have believed that such a representative was in a position to implement (as he ultimately attempted to do) any promise of consideration. ***That the Assistant State's Attorney himself thought it important to establish before the jury that no official source had promised Hamer consideration is made clear by his*** redirect ***examination***, which was the last testimony of Hamer's heard by the jury. . . . We are therefore unable to agree with the Illinois Supreme Court

> that "there was no constitutional infirmity by virtue of the false statement."

Napue, 360 U.S. at 269-71 (emphasis added). Here, as in *Napue*, the record is replete with constitutional infirmity necessarily inhering in the state's solicitation of and reliance upon Dunn's false testimony whose only value resulted from the state's purposeful and systematic massaging of that witness, and the prosecutor's solicitation from Geiogamah that she was not receiving any kind of deal in exchange for her testimony against Petitioner. Thus, the Tenth Circuit subjects COA applicants to a novel approach whereby the threshold inquiry limitations of *Barefoot*, *Slack*, and *Miller-El* are summarily disregarded in favor of a more nebulous "fair trial resulting in a verdict worthy of confidence" standard. This unique and unjustifiable approach, if allowed, will leave COA applicants in the Tenth Circuit with much to fear. For whatever else this process may be, it is neither the process compelled by this Court's COA decisions, nor the process that is "due" under the Fourteenth Amendment to the U.S. Constitution.

3. The Court Erred in Basing Its COA Analysis on Whether it Believed Petitioner Received a Fair Trial on the Merits, and Thereby Announced an Impermissibly Heightened Standard for COA Applicants in the Tenth Circuit Seeking Post-Conviction Relief.

As this Court has explained, a state prisoner whose habeas petition has been denied by a federal district court meets the standard for a COA if she shows that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a

different manner or that the issues presented [are] 'adequate to deserve encouragement to proceed further.'" *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1034 (citing *Slack*, 529 U.S. at 484); *Barefoot*, 463 U.S. at 893. That is, a COA must issue where the petitioner "demonstrate[s] that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1040 (quoting *Slack*, 529 U.S. at 484). Here, in denying Petitioner a COA, the Court of Appeals focused not on whether reasonable jurists could debate whether the district court should have found for petitioner, but on its own conclusion that Petitioner "received a fair trial resulting in a verdict worthy of confidence." (App. 5). This analysis subjects COA applicants in the Tenth Circuit to an impermissibly heightened standard of appellate review when seeking post-conviction relief.

In the Order Denying Petitioner's application, the Court of Appeals points out that the inquiry necessary to the determination of Petitioner's application is only a "threshold inquiry that 'does not require full consideration of the factual or legal bases adduced in support of the claims.'" The court also notes that "'[i]n fact, the statute forbids it.'" (App. 3, quoting *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1039). As the Court of Appeals further recognizes, "[t]he question is the debatability of the underlying claim, not the resolution of that debate." (App. 3, quoting *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1042).

In applying this standard to Petitioner's application, however, the Court of Appeals reaches the astonishing conclusion that Petitioner still would not have shown a substantial denial of a constitutional right even though

"the state now concedes error in its failure to disclose a pretrial arrangement with Ms. Geiogamah" (App. 4), and "[e]ven were [the court] to conclude that the State knowingly presented perjured testimony" in securing Petitioner's conviction. (App. 6). This conclusion is inexplicable, especially in light of the Court of Appeals' own recitation of the applicable "reasonable jurist" standard under *Miller-El*. (App. 3). Instead, the court relies on *Mitchell v. Gibson*, 262 F.3d 1036 (10th Cir. 2001) (citing *Kyles v. Whitley*, 514 U.S.419, 434 (1995)) and recites the proposition that "the touchstone of the inquiry is whether [Petitioner] received a fair trial resulting in a verdict worthy of confidence." (App. 5). This was error. The *Kyles* decision and the Tenth Circuit's *Mitchell* opinion discussing it, are both appeals from the denial of habeas petitions, not COA applications. Therefore, they do not address the appropriate standard for the issuance of a COA, but instead apply the standard for the granting of habeas relief on the merits *after* a COA has already issued. Specifically, in reviewing the OCCA's assessment of the general credibility of Ms. Geiogamah, and the district court's assessment of the OCCA's ruling, the Tenth Circuit Court of Appeals stated "we perceive nothing to lead us to conclude that the OCCA's application of federal law was unreasonable . . . As a result, we conclude that the district court's assessment of [Petitioner's] claim is not debatable by reasonable jurists(.)" (App. 5). However, this is demonstrably the wrong standard, and, if unchecked, will not only incentivise future prosecutorial misconduct, but will constitute a departure in Tenth Circuit COA jurisprudence away from this Court's mandate as most recently confirmed in *Miller-El*, and uniformly applied in virtually every other federal circuit.

Although the district court is beholden to the "unreasonable application of . . . federal law" standard for purposes of deciding whether to grant or deny a habeas petition under 28 U.S.C. § 2254(d)(1),[2] this is the wrong standard for a federal appellate court to apply in determining whether to issue a COA.[3] It is settled that a COA should be granted when an applicant "demonstrat[es] that jurists of reason could disagree with the district court's resolution of [her] case or that the issues presented were adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1034, citing *Slack*, 529 U.S. at 484. This analysis only requires, and indeed only *allows* a threshold determination of a COA applicant's constitutional claims. If, as here, those claims are sufficient to support a finding that reasonable jurists (such as the judge who presided over Petitioner's trial and the U.S. District Judge) could disagree (as, in fact, they did) about the district court's assessment of Petitioner's constitutional claims, the COA must be issued. *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1040. The Court of Appeals' denial of Petitioner's COA premised on the so-called *Kyles* standard

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[2] 28 U.S.C. § 2254(d)(1) states: "(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim – (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States(.)"

[3] Issuance of a COA is a jurisdictional prerequisite which must occur *before* a court of appeals undertakes a section 2254 analysis of whether "a state court[s] . . . adjudication of the claim . . . involved an unreasonable application of federal law." (*See*, *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1039).

(App. 4) as applied in *Mitchell*, 262 F.3d at 1060-62 & n.13, is tantamount to a judicial determination that a COA cannot issue in the Tenth Circuit unless the reviewing court is first convinced that the applicant will prevail in the subsequent habeas proceeding. The Petitioner urges that this standard is dangerously wrong, and the Tenth Circuit Court of Appeals' application of this wrong standard led to a decision that is in direct opposition to *Miller-El* and its progenitors, and it constitutes a new standard not applicable to COA applicants in any other U.S. circuit.

The Court of Appeals' analysis does precisely what this Court forbade in *Miller-El*. Namely, "side step[ping]" the threshold inquiry into Petitioner's claims to determine whether the district court's resolution of those claims in denying habeas relief could be debated by reasonable jurists. *Miller-El*, 537 U.S. 322, 123 S. Ct. at 1039. In essence, the Court of Appeals "decid[ed] the merits of an appeal, and then justif[ied] its denial of a COA based on its adjudication of the actual merits(.)" *Id.* This it cannot do, inasmuch as this Court has expressly ruled that such action constitutes the impermissible "deci[sion of] an appeal without jurisdiction." *Id.*

In denying Petitioner's request for a COA on this claim, the Court of Appeals focused on its ultimate merits by purporting to assess the overall fairness of Petitioner's trial:

> Having reviewed the district court's order, the record, and Ms. Mignot's claims on appeal, we see little room for doubt that, *even considering the State's failure to disclose* [it's deal with Geiogamah], Ms. Mignot nonetheless received a fair trial resulting in a verdict worthy of confidence. Even if our review left us with doubt, we perceive nothing to lead us to conclude that

> the OCCA's application of federal law was unreasonable given Ms. Geiogamah's obvious lack of credibility and the other witness testimony and evidence presented in the case.

(App. 5). Having made those findings, the court rejected Mrs. Mignot's claim on the merits, concluding that she had "received a fair trial resulting in a verdict worthy of confidence" – i.e., on the merits. (App. 5). This was sufficient, in the Tenth Circuit's view, to warrant the court's confidence in the reasonableness of the OCCA's application of federal law and the district court's denial of Petitioner's writ of habeas corpus. (App. 5-6). However, it completely fails to address the debatability of Petitioner's constitutional claims by reasonable jurists because it attempts to conform to a standard that is only applicable to substantive review of the denial of a habeas petition, not an application for a COA.[4]

Only after reaching that ultimate conclusion did the court declare – in a perfunctory finding and without any additional analysis – that a COA was denied. (App. 6). The court did not explain why its own determination that Petitioner's claim lacked merit compelled the conclusion that no "reasonable jurist" could find otherwise, especially when a "reasonable jurist" – i.e., the trial judge – *has* found otherwise on the record in this case. (App. 33). In fact, the Tenth Circuit did not even discuss the fact that the trial judge himself had said that if there was an undisclosed deal, a new trial would be required. *Id.*

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[4] *See* notes 2 & 3, supra.

The Tenth Circuit Court of Appeals erred in basing its denial of a COA on its own finding of overall "fairness" as required in the review of the denial of a habeas petition. The plain language of the statute, which is necessarily the starting point of the analysis (*see Williams v. Taylor*, 529 U.S. 420, 431 (2000)), makes clear that entitlement to a COA, even in the Tenth Circuit, turns not on whether a petitioner can establish entitlement to habeas relief prior to appeal as was required in *Kyles* and *Mitchell*, but on whether she can make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), so as to warrant permitting her to appeal at all. As discussed above, this Court has described the analysis as a "threshold inquiry," *Slack*, 529 U.S. at 482, 485. Clearly, such an inquiry is not a full review of the merits:

> In requiring a . . . 'substantial showing of the denial of [a constitutional] right,' obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court *could* resolve the issues [differently]; or that the questions are 'adequate to deserve encouragement to proceed further.'

Barefoot, 463 U.S. at 893 (quoting *Gordon v. Willis*, 516 F.Supp. 911, 913 (ND Ga. 1980) (citing *United States ex rel. Jones v. Richmond*, 245 F.2d 234 (2nd Cir. 1957), cert. denied, 355 U.S. 846 (1957)). Indeed, the clear language of the statute establishes that a petitioner's entitlement to pursue an appeal is not conditioned on persuading the appellate court, in advance, that the appeal must ultimately prevail, but rather on making a "substantial showing" of merit in the underlying constitutional claim. 28 U.S.C. § 2253(c)(2). (App. 29).

Entitlement to a COA turns simply on whether an applicant's constitutional claims are sufficiently plausible that they "'deserve encouragement to proceed further.'" *Slack*, 529 U.S. at 484 (quoting *Barefoot*, 463 U.S. at 893). Otherwise, only those habeas petitioners who ultimately prevail on appeal would be allowed to pursue an appeal in the first place. This would turn Section 2253 on its head. Yet, that is precisely what the Court of Appeals did here. It first rejected Petitioner's claims on the merits based on its assessment that she had "received a fair trial", and then summarily concluded without any additional analysis that no COA would issue. That approach cannot be reconciled with the statute or with this Court's habeas jurisprudence as uniformly applied in every other federal circuit. This unprecedented Tenth Circuit "fair trial" standard contravenes the bedrock principles of equity and justice and this Court's well-established Fourteenth Amendment due process jurisprudence, and, in the interest of uniformity among the Circuit Courts of Appeals and the fair administration of justice, should be reversed.

CONCLUSION

State prosecutors elicited false testimony from a key witness that she was not receiving a deal of leniency in exchange for her damning testimony against Petitioner. The state knew this testimony to be false. The state then prevaricated in open court in the face of a judicial declaration that such conduct, if proved, would "certainly" warrant a new trial. The state has now fully conceded that, in fact, this is precisely what occurred. In exchange for her

testimony against Petitioner, Geiogamah would receive leniency in the form of a complete dismissal of felony charges carrying a minimum 20-year prison sentence. Throughout the appeal process and habeas proceedings, the state has attempted to diminish the constitutional deprivation thus raised by referral to the credibility and importance of Geiogamah's testimony. However, this Court's well-settled jurisprudence makes clear that a witness's questionable credibility can never justify the judicial sanctioning of false testimony. The state also admitted that there are similar "legitimate concerns as to the truthfulness of Dunn's testimony," and the OCCA itself indicated that "Dunn was certainly a liar [who was presented by the state with the hope that] he would tell the most favorable story for the prosecution." This state-sponsored malfeasance constitutes a deprivation of Petitioner's right to due process of law, and, at the very least, the merits of these constitutional claims is debatable (and, in fact, has been debated) by reasonable jurists. As such, COA applicants in the Tenth Circuit have been and will be subjected to a different, higher standard as to COA's, in violation of the due process clause of the Fourteenth Amendment to the U.S. Constitution.

The Petition for a Writ of Certiorari should issue, the Certificate of Appealability should be granted, and Mrs. Mignot should be allowed to prosecute an appeal from the

district court's denial of her petition for a writ of habeas corpus.

Respectfully submitted,

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APPENDIX A

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

CHARLOTTE ANN MIGNOT, Petitioner-Appellant, vs. NEVILLE MASSIE, Warden, Respondent-Appellee.	No. 02-5159 (D.C. No. 00-CV-595-E(M)) (N.D. Okla.)

ORDER DENYING APPLICATION FOR A CERTIFICATE OF APPEALABILITY

(Filed Aug. 25, 2003)

Before **KELLY, BRISCOE**, and **LUCERO**, Circuit Judges.

Petitioner-Appellant Charlotte Ann Mignot, a state inmate appearing through counsel, seeks a certificate of appealability ("COA") to allow her to appeal the district court's order denying relief on her petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Because we conclude that reasonable jurists would not find the district court's assessment of her constitutional claims debatable or wrong, we deny a COA.

Ms. Mignot was convicted by a jury in Oklahoma state court of murder in the first degree for the death of her husband. She received a sentence of life imprisonment. At trial, Ms. Mignot maintained that on the night her husband was stabbed to death in their home, she

awoke to his screams and was kidnaped by two intruders who forced her to withdraw money, beat her up, and finally released her in another town. Ms. Mignot was implicated by Johnny Dunn when he told investigators that she solicited him to assist her in staging the burglary.

On direct appeal to the Oklahoma Court of Criminal Appeals ("OCCA"), Ms. Mignot claimed four errors: (1) denial of due process from the state's failure to disclose a leniency agreement or understanding with witness Margie Geiogamah; (2) denial of due process from the state's presentation of misleading and perjured testimony from Mr. Dunn; (3) the district court's denial of a directed verdict in her favor for lack of corroboration of accomplice testimony; and (4) denial of the right to confront witnesses from the trial court's restriction or denial of counsel's cross examination. The OCCA affirmed on the merits in an unpublished summary opinion and subsequently denied rehearing.

Ms. Mignot then filed a federal habeas petition realleging the first three claims advanced before the OCCA. The district court carefully analyzed all three claims and concluded that Ms. Mignot was not entitled to habeas relief. In particular, the court determined that based on the record before it, Ms. Mignot failed to demonstrate that the OCCA's adjudication of claims one and two were contrary to established Supreme Court precedent set forth in *Giglio v. United States*, 405 U.S. 150 (1972) and *Napue v. Illinois*, 360 U.S. 264 (1959). Aplt. App. at 150-52.

Ms. Mignot now seeks a COA to allow her to appeal the district court's denial of her habeas petition. She

reasserts the first two claims involving denial of due process that were presented to and dismissed on the merits by the district court. Aplt. Br. at 16, 26.

We would have jurisdiction over the appeal only if we were to issue a COA. *Miller-El v. Cockrell*, 537 U.S. 322, 123 S. Ct. 1029, 1039 (2003). A COA can issue only "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). Where, as here, the district court has rejected petitioner's constitutional claims on the merits, the petitioner satisfies this standard by demonstrating "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El*, 123 S. Ct. at 1040 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Although a "COA determination under § 2253(c) requires an overview of the claims in the habeas petition and a general assessment of their merits," it is a threshold inquiry that "does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it." *Id.* at 1039; *id.* at 1042 ("The question is the debatability of the underlying constitutional claim, not the resolution of that debate."). "[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that [the] petitioner will not prevail." *Id.* at 1040. While Ms. Mignot, in applying for a COA, is not required to prove the merits of her case, she must demonstrate "something more than the absence of frivolity or the existence of mere good faith" on her part. *Id.* at 1040 (quotations omitted).

We thus turn to an overview of the merits of Ms. Mignot's constitutional claims and an examination of the district court's assessment of them to decide whether reasonable jurists would find that assessment debatable or wrong. We first note that whether Ms. Mignot's claims are characterized as involving the knowing solicitation by the government of false testimony or the failure by the government to divulge exculpatory information, the district court's analysis reflects its proper recognition that the governing standard in this habeas case is the *Kyles* standard of whether there is a "reasonable probability that . . . the result of the proceeding would have been different." *Mitchell v. Gibson*, 262 F.3d 1036, 1060-62 & n.13 (10th Cir. 2001) (quoting *Kyles v. Whitley*, 514 U.S. 419, 433 (1995)).

In *Mitchell*, we recognized that even if a habeas petitioner succeeds under the less demanding *Giglio* standard (whether "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury," *Giglio*, 405 U.S. at 154), the petitioner will still have to satisfy the harmless error standard of *Brecht v. Abrahamson*, 507 U.S. 619, 623 (1993) (requiring a showing that the error had a "substantial and injurious effect or influence in determining the jury's verdict"). *Mitchell*, 262 F.3d at 1062 n.13; *see also Gilday v. Callahan*, 59 F.3d 257, 267-68 (1st Cir. 1995). After recognizing that the Supreme Court has noted that the *Brecht* standard is necessarily met by a successful *Kyles* showing, we held that for all practical purposes, "the two standards ultimately mandate the same inquiry." *Mitchell*, 262 F.3d at 1062 n.13 (citing *Kyles*, 514 U.S. at 435-36). Thus, although the State now concedes error in its failure to disclose a pretrial arrangement with Ms. Geiogamah,

the district court nonetheless recognized and applied the proper standard (i.e., the equivalent *Kyles* or *Brecht* standard) in assessing the OCCA's decision.

Under the "reasonable probability" standard, Ms. Mignot is not required to demonstrate that had the government's conduct not occurred, she more likely than not would have been acquitted. *Kyles*, 514 U.S. at 434. Instead, the touchstone of the inquiry is whether she received a fair trial resulting in a verdict worthy of confidence. *Id.* In concluding that the OCCA reasonably applied the pertinent federal law, the district court emphasized that the essence of Ms. Geiogamah's testimony was corroborated by other witnesses and evidence and that the jury had considerable reasons to doubt her credibility even without the disclosure of any agreement with the State. Aplt. App. at 149-151. Having reviewed the district court's order, the record, and Ms. Mignot's claims on appeal, we see little room for doubt that, even considering the State's failure to disclose, Ms. Mignot nonetheless received a fair trial resulting in a verdict worthy of confidence. Even if our review left us with doubt, we perceive nothing to lead us to conclude that the OCCA's application of federal law was *unreasonable* given Ms. Geiogamah's obvious lack of credibility and the other witness testimony and evidence presented in the case. As a result, we conclude that the district court's assessment of the merits of Ms. Mignot's first claim is not debatable by reasonable jurists given the standards that must be employed on collateral review of the OCCA's disposition of her claim.

We reach a similar conclusion with respect to the presentation of Mr. Dunn's allegedly false and misleading testimony. Here, the district court focused on the recognition by the OCCA that Ms. Mignot failed to show that the

State knowingly presented misleading perjured testimony from Mr. Dunn. Aplt. App. at 151. Furthermore, the district court pointed out that the forensic evidence in the case was neither necessarily supported nor contradicted by Mr. Dunn's testimony. *Id.* at 152. Even were we to conclude that the State knowingly presented perjured testimony, we fail to see how the OCCA's application of the "reasonable probability" standard would be unreasonable. Therefore, we conclude that the district court's assessment of this claim is also not debatable by reasonable jurists.

For the foregoing reasons, we DENY Ms. Mignot's application for a COA and DISMISS the appeal.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLOTTE ANN MIGNOT, Petitioner,	)	
vs	)	No. 00-CV-595-E (M)
NEVILLE MASSIE, Warden, Respondent.	)	

ORDER

(Filed Nov. 15, 2002)

On October 3, 2002, Petitioner, a state prisoner in this matter by counsel, filed her notice of appeal (Docket #19) and application for certificate of appealability (#20). She also paid the full $105.00 filing fee required to commence an appeal. Petitioner appeals form [sic] this Court's Order and Judgment, entered September 3, 2002, denying her petition for writ of habeas corpus.

Pursuant to 28 U.S.C. § 2253, as amended by § 102 of the Antiterrorism and Effective Death Penalty Act of 1996, a habeas petitioner is required to obtain a certificate of appealability before appealing a final order in a habeas corpus proceeding under 28 U.S.C. § 2254. Section 2253(c) instructs that the court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right," and the court "indicates which specific issue or issues satisfy [that] showing." A petitioner can

satisfy that standard by demonstrating that the issues raised are debatable among jurists, that a court could resolve the issues differently, or that the questions deserve further proceedings *Slack v. McDaniel*, 529 U.S. 473 (2000) (citing *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). After considering the record in this case and the arguments asserted by Petitioner in her application for a certificate of appealability, the Court concludes that a certificate of appealability should not issue as Petitioner has not made a substantial showing of the denial of a constitutional right. Petitioner's request for a certificate of appealability should be denied.

ACCORDINGLY, IT IS HEREBY ORDERED that Petitioner's request for a certificate of appealability (Docket #20) is **denied**. The Clerk is directed to send a copy of this Order to the Tenth Circuit Court of Appeals.

SO ORDERED THIS 15th day of November, 2002.

/s/ James O. Ellison
JAMES O. ELLISON, Senior Judge
UNITED STATES DISTRICT COURT

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLOTTE ANN MIGNOT, Petitioner, vs. NEVILLE MASSIE, Warden, Respondent.	)	No. 00-CV-595-E (M) (Filed Sep. 3, 2002)

ORDER

This is a proceeding on Petitioner's 28 U.S.C. § 2254 habeas corpus petition. Petitioner is in custody of the Oklahoma Department of Corrections and appears in this matter through counsel. For the reasons discussed below, the Court finds this petition should be denied.

BACKGROUND

On July 9, 1996, Petitioner's husband, Larry Mignot, was stabbed to death while laying in bed at his home in Sand Springs. Petitioner, Charlotte Mignot, told police that she slept in her daughter's room that night, that she heard noises, including screaming by Larry Mignot, and that when she went to investigate, she was kidnaped by two men that had broken into her home, taken to an automatic teller machine to withdraw money, beaten up, and finally let go near Prue, Oklahoma. Although she was considered a suspect, Petitioner was not charged until Johnny Dunn implicated her in the murder by telling investigators that she solicited him to assist her in staging a burglary at their residence.

Petitioner was charged with First Degree Murder in the stabbing death of Larry Mignot. At the conclusion of a jury trial, held September 17th through the 24th, 1997, in Tulsa County District Court, Case No. CF-96-3314. Petitioner was convicted [sic] Murder in the First Degree and sentence [sic] to life imprisonment.

Petitioner filed a Motion for New Trial, which was denied on December 8, 1997. Petitioner appealed to the Oklahoma Court of Criminal Appeals ("OCCA") where she raised four (4) propositions of error, as follows:

Proposition I:	The State's presentation of misleading and perjured testimony of Dunn deprived Petitioner of her due process right to a fair trial;
Proposition II:	Petitioner's Due Process rights were violated by the State's failure to disclose the State's leniency agreement or understanding with Geiogamah;
Proposition III:	The trial court erred in overruling Petitioner's motion for directed verdict for lack of corroboration of accomplice testimony;
Proposition IV:	Petitioner was denied her constitutional right to confront witnesses by the trial court's restriction/denial of counsel's cross-examination of States [sic] witnesses.

(#6, Ex. A). On August 24, 1999, the OCCA entered its unpublished summary opinion affirming the Judgment and Sentence of the trial court. (#6, Ex. C). Petitioner also filed a Petition for Rehearing of direct appeal with the

OCCA, and the Petition for Rehearing was denied on September 29, 1999.

On July 18, 2000, Petitioner filed her federal petition for writ of habeas corpus (#1). In her petition, Petitioner asserts the first three of four propositions presented to the OCCA on direct appeal. (#1). In response to the petition, Respondent asserts that habeas corpus relief is not warranted under the 28 U.S.C. § 2254(d) standard. (#6). Respondent has provided copies of the trial transcript in Tulsa County District Court, Case No. CF-96-3314. *See* #9.

ANALYSIS

A. Exhaustion/Evidentiary Hearing

The exhaustion requirement of 28 U.S.C. § 2254(b) is satisfied in this case because Petitioner fairly presented all claims to the OCCA on direct appeal.

In addition, the Court finds that Petitioner is not entitled to an evidentiary hearing. *See Michael Williams v. Taylor*, 529 U.S. 420, 120 S.Ct. 1479, 146 L.Ed.2d 435 (2000).

B. Claims adjudicated by the OCCA

The AEDPA amended the standard to be applied by federal courts reviewing constitutional claims brought by prisoners challenging state convictions. Pursuant to § 2254(d), as amended by the AEDPA,

> [a]n application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated

> on the merits in State court proceedings unless the adjudication of the claim –
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

28 U.S.C. § 2254(d). In *Terry Williams v. Taylor*, 529 U.S. 362, 412-13, 120 S.Ct. 1495, 1523 (2000) (O'Connor, J., concurring), the Supreme Court provided guidance in applying § 2254(d)(1) as follows:

> . . . § 2254(d)(1) places a new constraint on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas corpus with respect to claims adjudicated on the merits in state court. Under § 2254(d)(1), the writ may issue only if one of the following two conditions is satisfied – the state-court adjudication resulted in a decision that (1) "was contrary to . . . clearly established Federal law, as determined by the Supreme Court of the United States," or (2) "involved an unreasonable application of . . . clearly established Federal law, as determined by the Supreme Court of the United States." Under the "contrary to" clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. Under the "unreasonable application" clause, a federal habeas court

> may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.

The Court further commented that

> an unreasonable application of federal law is different from an incorrect application of federal law . . . Under § 2254(d)(1)'s "unreasonably [sic] application" clause, then, a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly. Rather, that application must also be unreasonable.

Id. at 411. The relevant inquiry under this clause, therefore, is "whether the state court's application of clearly established federal law was objectively unreasonable." *Id.* at 409.

The Court further addressed the meaning of the phrase "clearly established Federal law." *See id.* at 412. The phrase restricts the source of clearly established law solely to the Supreme Court's jurisprudence – "the holdings, as opposed to dicta, of [the] Court's decisions as of the time of the relevant state-court decision." *See id.* Accordingly, this Court, sitting as a federal habeas court in reviewing this petition, is guided by and restricted to applicable United States Supreme Court precedent.

As state above, the OCCA adjudicated each of Petitioner's claims on direct appeal. Thus, the § 2254(d) standard of review governs this Court's review of Petitioner's federally cognizable claims previously adjudicated

on the merits by the OCCA. After careful review of the record in this case, the Court finds Petitioner has failed to demonstrate that the decision of the OCCA was contrary to clearly established federal law as set forth by the Supreme Court or that there was an unreasonable application of Supreme Court law to the facts of this case. For the reasons discussed below, the Court finds habeas corpus relief should be denied on each of Petitioner's federally cognizable claims adjudicated on the merits by the OCCA on direct appeal.

1. *Failure to disclose leniency agreement or understanding with Geiogamah (claim I)*

As her first proposition of error, Petitioner asserts that the state failed to disclose its leniency agreement or understanding with witness Margie Geiogamah in violation of her right to due process. In adjudicating this claim as part of Petitioner's direct appeal, the OCCA found that "the error in failing to disclose witness Geiogamah's expectation of leniency (and subsequent dismissal of her case) did not violate Mignot's due process rights because the jury has considerable reason to doubt Geiogamah's credibility, and her testimony merely corroborated both the accomplice's evidence and forensic evidence." (#6, Ex. C at 2).

Petitioner argues that the State had a "deal" with witness Margie Geiogamah that was not disclosed prior to trial. Geiogamah was the driver of the car that picked up Petitioner the morning of July 9th, 1996. Geiogamah testified that Petitioner flagged them down by waiving both hand [sic] over her head, wrists together, (Tr. Vol. II at 66), that Petitioner looked clean, like she had just had a shower, (*Id.* at 68-9), and that there was wire around only

one of Petitioner's hands, and they were not tied together. (*Id.* at 70). Petitioner argues that Geiogamah was a "key witness" who received leniency on (dismissal of) a charge of felony possession of methamphetamine in return for her testimony. Although the State, at the hearing on the motion for new trial, argued that it had not promised Geiogamah any consideration for her trial testimony, on direct appeal, and in front of this Court, the State conceded that proper disclosure was not made, but argued that the state had sufficient evidence to support a conviction without Geiogamah's testimony and that Petitioner had a plethora of evidence with which to impeach Geiogamah.[1]

Petitioner asserts that the OCCA's decision on this proposition is contrary to established federal precedent in *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed. 2d 1217 (1959) and *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed. 2d 104 (1972). In *Napue* the Court held that the use of false testimony that the State's "principal witness," characterized as "extremely important" had received no consideration for his testimony violated petitioner's due process rights. The *Napue* Court held that a new trial is required if "the false testimony could . . . in any reasonable likelihood have affected the judgment of the jury. . ." 79 S.Ct. at 1178. Similarly, In *Giglio,* the Court held that failure to disclose an alleged promise of leniency made to the government's key witness violated petitioner's rights to due process. In *Giglio*, the

[1] At trial, Geiogamah testified that she had thirteen prior felony convictions and that she was currently under arrest for a felony drug charge. (Tr. Vol. II at 79).

Court also recognized that a finding of materiality of the evidence would be required before a new trial would be ordered. 92 S.Ct. at 766. In carrying out this analysis, the *Giglio* Court noted that the "Government's case depended almost entirely on [the witness in question's] testimony; without it there could have been no indictment and no evidence to carry the case to the jury." *Id.*

After reviewing the record in this case, the Court finds that Petitioner has failed to make the showing required under 28 U.S.C. § 2254(d). The jury in this case heard testimony from a number of witnesses, including another witness, Eva Cox, who testified that Petitioner's hands were not tied when she attempted to flag them down on Prue Road, and John Dunn who testified that she showered. In light of the evidence presented to the jury, the OCCA's determination that Geiogamah's testimony "merely corroborated both the accomplice's evidence and forensic evidence" and therefore did not violate Petitioner's due process rights, was a reasonable application of *Napue* and *Giglio*. As a result, habeas corpus relief should be denied on Petitioner's first claim.

2. Presentation of misleading and perjured testimony (claim 2)

As her second proposition of error, Petitioner asserts that the State's presentation of misleading and perjured testimony of Dunn deprived Petitioner of her due process right to a fair trial. In adjudicating this part of Petitioner's direct appeal, the OCCA found that "Mignot fails to show that the state knowingly presented misleading perjured testimony." (#6, Ex. C at 2). In reaching this conclusion, the OCCA noted:

> John Dunn was certainly a liar. Taken as a whole, Dunn's statements and testimony showed he lied several times, but beyond his admissions there is no telling which statements were lies and his testimony itself was not misleading. We do not agree with Mignot's insistence that Dunn's earlier statements, rather than his trial testimony, must be the truth. The State admitted Dunn was a liar and appears to have put him on hoping he would tell the most favorable story for the prosecution. Much of Dunn's testimony was corroborated by forensic evidence, and the gaps in his story reflect on his credibility but do not compel the conclusion he perjured himself at trial.

(*Id.* at fn 1).

Petitioner argues that Dunn told a number of different stories about the occurrences on July 9th, including a story given only a few weeks before trial that petitioner took a shower that night after stabbing her husband. Petitioner argues that the solicitation of this changed testimony was improper because the testimony was contradicted by a host of prior factual statements by Dunn as well as the forensic evidence.

Petitioner argues that the OCCA's decision on this issue is contrary to established federal law that a prosecution's sponsorship of perjured testimony or other false evidence violates a defendant's due process rights to a fair trial. *Napue*, 79 S.Ct. at 1177; *Giglio*, 92 S.Ct. at 766. Petitioner argues that this rule is extended by *United States v. Agurs*, 427 U.S. 97, 103, 96 S.Ct. 2392, 2397, 49 L.Ed. 2d 342 (1976) to testimony which the prosecution knew of [sic] should have known was false. None of this authority, however, supports Petitioner's insistence that it

was Dunn's trial testimony that was not the truth. Moreover, while the Court recognizes that the forensic evidence does not necessarily support Dunn's testimony that Petitioner took a shower at her house that night after stabbing her husband, the Court does not find that the forensic evidence is *contrary* to such testimony.

The OCCA's conclusion is neither contrary to established law, nor based on an unreasonable determination of the facts. Habeas corpus relief on this claim should be denied.

3. Lack of corroboration of accomplice testimony (claim 3)

As her third proposition of error, Petitioner argues that the trial court erred in overruling her motion for directed verdict for lack of corroboration of accomplice's testimony. In its decision on direct appeal, the OCCA concluded that "the accomplice testimony was corroborated by independent evidence as to a material fact linking Mignot to the crime." (#6, Ex. C at 2). On direct appeal, Petitioner argued that she was entitled to relief based on Okla. Stat. tit. 22, § 742, requiring that accomplice testimony be corroborated.

Although Oklahoma law requires the corroboration of accomplice testimony, federal habeas review is governed by federal constitutional principles, not state law. "The Constitution does not prohibit convictions based primarily on accomplice testimony." *Foster v. Ward*, 182 F.3d 1177, 1193 (10th Cir. 1999) (quoting *Scrivner v. Tansy*, 68 F.3d 1234, 1239 (10th Cir. 1995), *cert. denied,* 516 U.S. 1178, 116 S.Ct.. 1277, 134 L.Ed.2d 223 (1996)). As there is no constitutional requirement that Dunn's testimony be

corroborated, the Court need not address Petitioner's claimed deprivation of protection under state law.

To the extent Petitioner simply challenges the sufficiency of the evidence to support her conviction, federal habeas corpus law requires only that, "after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S.Ct. 2781, 61 L.Ed. 2d 560 (1979). In this case Dunn testified that Petitioner took a shower at her home that night after stabbing her husband. The jury was entitled to discredit or believe Dunn's testimony. In addition, the jury heard Petitioner's testimony that she "witnessed" something horrible, (Tr. VI at 118), testimony that the door to the master bedroom was locked (Tr. I at 70 and Tr. III at 47), testimony that Petitioner left her daughter's room twice during events in question, and testimony that Petitioner's hands were not tied as she flagged down traffic on Prue road. As a matter of federal constitutional law, there was sufficient evidence for the jury to convict Petitioner. For all these reasons, the Court concludes that habeas relief should be denied on this claim.

CONCLUSION

After carefully reviewing the record in this case, the Court concludes that the Petitioner has not established that she is in custody in violation of the Constitution or laws of the United States.

ACCORDINGLY, IT IS HEREBY ORDERED that the petition for writ of habeas corpus (Docket #1) is denied. Petitioner's renewed application for status conference or,

alternatively, for expedited determination of the petition (Docket #16) is declared moot.

SO ORDERED THIS 27th day of August, 2002.

/s/ James O. Ellison
JAMES O. ELLISON,
SENIOR JUDGE
UNITED STATES
DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLOTTE ANN MIGNOT, Petitioner,	)	
vs.	)	No. 00-CV-595-E(M)
NEVILLE MASSIE, Warden, Respondent.	)	

JUDGMENT

(Filed Sept. 3, 2002)

This matter came before the Court upon Petitioner's 28 U.S.C. § 2254 petition for writ of habeas corpus. The Court duly considered the issues and rendered a decision herein.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that judgment is hereby entered for Respondent and against Petitioner.

SO ORDERED THIS 27th day of August, 2002.

/s/ James O. Ellison
JAMES O. ELLISON,
Senior Judge
UNITED STATES DISTRICT COURT

APPENDIX D

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHARLOTTE ANN MIGNOT, Appellant, v. **STATE OF OKLAHOMA,** Appellee.	)))))))	**NOT FOR PUBLICATION** Case No. F-97-1709

SUMMARY OPINION

(Filed Aug. 24, 1999)

CHAPEL, JUDGE:

Charlotte Ann Mignot was tried by jury and convicted of First Degree Murder in violation of 21 O.S. 1991, § 701.7(C), in the District Court of Tulsa County, Case No. CF-96-3314. In accordance with the jury's recommendation the Honorable Jesse S. Harris sentenced Mignot to life imprisonment. Mignot appeals from this conviction and sentence.

Mignot raises four propositions of error in support of her appeal:

I. The State's presentation of the misleading and perjured testimony of Dunn deprived Mignot of her due process right to a fair trial;

II. Mignot's Due Process rights were violated by the State's failure to disclose the State's leniency agreement or understanding with Geiogamah;

III. The trial court erred in overruling Mignot's motion for directed verdict for lack of corroboration of accomplice testimony; and

IV. Mignot was denied her constitutional right to confront witnesses by the trial court's restriction/denial of counsel's cross-examination of State's witnesses.

After thorough consideration of the entire record before us on appeal including the original record, transcripts, briefs and exhibits, we have determined that neither reversal nor modification are required under the law and evidence. We find in Proposition I that Mignot fails to show the State knowingly presented misleading perjured testimony.[1] We find in Proposition II that the error in failing to disclose witness Geiogamah's expectation of leniency (and subsequent dismissal of her case) did not violate Mignot's due process rights because the jury had considerable reason to doubt Geiogamah's credibility, and her testimony merely corroborated both the accomplice's evidence and forensic evidence.[2] We find in Proposition III

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[1] *Amalza v. State*, 1995 OK CR 80, 911 P.2d 286, 307, quoting *McCarty v. State*, 1988 OK CR 271, 765 P.2d 1215, 1219. John Dunn was certainly a liar. Taken as a whole, Dunn's statements and testimony show he lied several times, but beyond his admissions there is no telling which statements were lies and his testimony itself was not misleading. We do not agree with Mignot's insistence that Dunn's earlier statements, rather than his trial testimony, must be the truth. The State admitted Dunn was a liar and appears to have put him on hoping he would tell the most favorable story for the prosecution. Much of Dunn's testimony was corroborated by forensic evidence, and the gaps in his story reflect on his credibility but do not compel the conclusion he perjured himself at trial.

[2] *Id.; Howard v. State*, 1987 OK CR 116, 738 P.2d 543, 545-46, quoting *Runnels v. State*, 1977 OK CR 146, 562 P.2d 932, 936, *cert. denied*, 434 U.S. 893, 88 S.Ct. 270, 54 L.Ed.2d 179; *Giglio v. United*

(Continued on following page)

that the accomplice testimony was corroborated by independent evidence as to a material fact linking Mignot to the crime.[3] We find in Proposition IV that Mignot's right to confrontation was not denied when the trial court properly sustained objection to questions assuming facts not in evidence and questions that had been previously answered.[4] Mignot's Motion for Oral Argument is **DENIED**.

Decision

The Judgment and Sentence of the District Court is **AFFIRMED**

APPEARANCES AT TRIAL	**APPEARANCES ON APPEAL**
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1310 SOUTH DENVER	TULSA, OKLAHOMA 74119
TULSA, OKLAHOMA 74119	JOHN E. DOWDELL
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	ATTORNEYS FOR APPELLANT

States, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972); *Napue v. Illinois*, 360 U.S. 264, 269, 79 S.Ct. 1173, 1177, 3 L.Ed.2d 1217 (1959).

[3] *Cummings v. State*, 1998 OK CR 45, 968 P.2d 821, 830, *cert. denied*, ___ U.S. ___; 119 S.Ct. 2054; *Rogers v. State*, 1995 OK CR 8, 890 P.2d 959, 974, *cert. denied*, 516 U.S. 919, 116 S.Ct. 312, 133 L.Ed.2d 215.

[4] *Perry v. State*, 1995 OK CR 20, 893 P.2d 521, 530, quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 680, 106 S.Ct. 1431, 1435-36, 89 L.Ed.2d 674 (1986).

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OPINION BY: CHAPEL, J.

STRUBHAR, P.J.:	CONCUR
LUMPKIN, V.P.J.:	CONCUR
JOHNSON, J.:	CONCUR
LILE, J.:	CONCUR

APPENDIX E

IN THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

CHARLOTTE ANN MIGNOT,	)	
Appellant,	)	
v.	)	Case No. F-97-1709
THE STATE OF OKLAHOMA,	)	
Appellee.	)	

ORDER DENYING PETITION FOR REHEARING AND DIRECTING ISSUANCE OF MANDATE

(Filed Sep. 29, 1999)

CHAPEL, JUDGE:

Charlotte Ann Mignot was tried by jury and convicted of First Degree Murder in violation of 21 O.S.1991, § 701.7(C), in the District Court of Tulsa County, Case No. CF-96-3314. In accordance with the jury's recommendation the Honorable Jesse S. Harris sentenced Mignot to life imprisonment.

By its August 24, 1999 unpublished opinion, this Court denied Mignot's appeal. Mignot has now filed with this Court a Petition for Rehearing.[1] A Petition for Rehearing shall be filed for two reasons only:

---

[1]Rule 3.14, *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18, App. (1999).

(1) That some question decisive of the case and duly submitted by the attorney of record has been overlooked by the Court, or

(2) That the decision is in conflict with an express statute or controlling decision to which the attention of this Court was not called either in the brief or in oral argument.

Mignot's Petition for Rehearing fails to meet the criteria set forth in Rule 3.14 and is denied.[2]

IT IS THEREFORE THE ORDER OF THE COURT that the Petition for Rehearing is **DENIED**. The Clerk of the Court is directed to issue the mandate forthwith.

IT IS SO ORDERED.

WITNESS OUR HANDS AND THE SEAL OF THIS COURT this 29th day of September, 1999.

/s/ Reta M. Strubhar
RETA M. STRUBHAR,
Presiding Judge

/s/ Gary L. Lumpkin
GARY L. LUMPKIN,
Vice-Presiding Judge

/s/ Charles A. Johnson
CHARLES A. JOHNSON
Judge

[2] Contrary to Mignot's argument, the Court considered all controlling authority and applied the correct legal standard in reaching its decision.

/s/ Charles S. Chapel
CHARLES S. CHAPEL, Judge

/s/ Steve Lile
STEVE LILE, Judge

ATTEST:

/s/ James Patterson
Clerk

APPENDIX F

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the Constitution of the United States provides, in relevant part:

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2253(c) of Title 28, United States Code, provides:

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from –

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

APPENDIX G

IN THE DISTRICT COURT OF TULSA COUNTY
STATE OF OKLAHOMA

STATE OF OKLAHOMA, PLAINTIFF, VS. CHARLOTTE ANN MIGNOT, DEFENDANT.	)))))))	CASE NO. CF 96-3314 (Filed Mar. 10, 1998)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JESSE S. HARRIS
JUDGE OF THE DISTRICT COURT
TULSA COUNTY COURTHOUSE
TULSA, OKLAHOMA
DECEMBER 8, 1997

APPEARANCES

FOR THE PLAINTIFF: MR. STEPHEN SEWELL,
MR. JAMES DUNN,
MR. DAVID BLAKELY and
MR. BOB CRAIN
Assistant District Attorneys
Tulsa County Courthouse
Tulsa, Oklahoma 74103

FOR THE DEFENDANT: MR. ALLEN SMALLWOOD
and MR. JOHN WALLACE
Attorneys at Law
Tulsa, Oklahoma

REPORTER: BRENDA EL HASSAN,
CSR, RMR
Official Court Reporter

DISTRICT COURT OF OKLAHOMA
Official Transcript

* * *

[92] there are no other reasonable conclusions to reach in this case other than there was a deal. There was consideration for this woman's testimony and she knew it: otherwise, the case would have been dismissed back in May or June or July when Mr. Elias said he was trying to get it dismissed. They didn't want to get it dismissed because they were going to lose Marge Geiogamah. They wanted her to testify first. She knew it and they knew it.

THE COURT: Is there a final summary response by the State?

MR. CRAIN: Your Honor, no further response.

THE COURT: The Court, having listened to the sworn testimony of all of the witnesses in this case, both for the State as well as for the Defendant, as well as having heard the closing statement of Defendant, will make the following determination.

Mr. Smallwood, I certainly agree with you that there is no specific indication of a – of a plea bargain arrangement between the State and the Defendant Margie Geiogamah who testified against your client in this case. In fact, as I've indicated only minutes ago, both the State's attorney who handled this case, Ms. Mignot's case, as well as who happened to be the same person who handled Ms. Geiogamah's case, has testified that he did not make any

specific recommendation to Ms. Geiogamah for [93] testifying against Ms. Mignot. In addition, Mr. Elias has testified, the attorney for Ms. Geiogamah, and he's also indicated that there was no – not only was there not a plea bargain arrangement reached, there was no conversation about a plea bargain, and the Court has the sworn testimony of Ms. Geiogamah who indicates the same.

Now I know you've charged there may have been, in your words, some footsies being played under the table but, quite frankly, anything is possible. I don't know that that happened and I'm not about to guess as to whether or not the State has engaged in some plea bargain arrangement for which there is no specific evidence that can be testified to or shown to this Court.

In addition, I do very seriously consider these allegations that you've made against the District Attorney's Office. They are, in fact, quite frankly, serious; in fact, overwhelming allegations. And in fact, I daresay if, in fact, they are true, then certainly your client should be granted a new trial. However – in fact, the Court, based upon the seriousness of the allegations which, quite frankly, at least in my view, strike at the heart of the criminal justice system, at least insofar as the District Attorney's Office is concerned, and that is they do have an ethical duty to prosecute a case in the fairest manner possible.

[94] I've taken the, at least in my view, the unusual procedure of allowing you to call Mr. Sewell, the District Attorney who handled both Ms. Mignot's case as well as the District Attorney who handled Ms. Geiogamah's case, and cross examine him on the witness stand with even more latitude. However, at this time I find that there was no specific plea bargain arrangement which took place

between the State of Oklahoma and Margie Geiogamah, nor is there any evidence to convince me that there was some sort of tacit understanding that was never written down or that was never specifically agreed to by either the State, Ms. Geiogamah, or her lawyer, Mr. Elias. As such, sir, your Motion for New Trial will be overruled. Grant you an exception to the Court's ruling.

* * *

APPENDIX H

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OKLAHOMA

CHARLOTTE ANN MIGNOT,	)	**Case No.**
Petitioner,	)	**00-CV-0595-BU (M)**
	)	
vs.	)	
NEVILLE MASSIE, Warden,	)	
	)	
Respondent.	)	

RESPONSE TO PETITION FOR WRIT OF HABEAS CORPUS

The Attorney General of the State of Oklahoma, W. A. Drew Edmondson, appearing on behalf of the above-named Respondent, in response to the Petition for Writ of Habeas Corpus on file herein shows the Court as follows:

1. Petitioner, Charlotte Ann Mignot, an inmate in the custody of the State of Oklahoma, has filed with this Court a Petition seeking federal habeas corpus relief.

2. Petitioner is currently incarcerated pursuant to a Judgment and Sentence in the District Court of Tulsa County, State of Oklahoma, Case No. CF-96-3314. Petitioner was found guilty after a jury trial of the crime of Murder in the First Degree. The jury recommended a sentence of life imprisonment. The judge followed the jury's recommendation and sentenced Petitioner accordingly.

3. Petitioner filed a direct appeal of her conviction with the Oklahoma Court of Criminal Appeals. (Appellant's and Appellee's Brief in Chief attached as Exhibits A

* * *

[6] Pursuant to Section 2254 (d)(1), Petitioner cannot establish that the state court rejection of her appeal was "contrary to, or involves an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States".

As to the specific issue raised in Ground One, the discussion should begin with by noting that on direct appeal, the State conceded that proper disclosure of the nature of the arrangement with witness Geiogomah was not made. Petitioner cites a portion of a sentence in the State's direct appeal brief in which the potential seriousness of the omission was noted. (***Petition***, at 5). Citing the full sentence puts the admission in context: "Despite raising legitimate areas of concern, this proposition should be rejected because the State had sufficient evidence to support a conviction without Ms. Geiogamah's testimony." (Exhibit B, at 13). The distinction was discussed in detail in the State's direct appeal brief. A portion of this discussion illustrates the lack of significance and the substantial credibility questions regarding the testimony at issue:

> Contrary to the defendant's assertion, Ms. Geiogamah's testimony did not contain the sole nugget of corroboration needed to accept Dunn's version of events. Fortunately for the State, the 200 plus pages of the defendant's trial testimony, coupled with a number of statements she made to authorities and friends proved to be sufficient corroboration of Dunn's testimony to support a

> guilty verdict. Alternatively, even if Ms. Geiogamah testimony was important, the jury had overwhelming reasons before them to be highly suspicious of Geiogamah's testimony. Ms. Geiogamah was driving around at 3 a.m. with three other people who had been "shooting up crank". (Tr.IV, 210). She admitted that at the time of her testimony she was under arrest for a felony drug charge and that she had thirteen (13) prior felony convictions. (Tr.II, 79). The trial court put the jurors on notice of these
>
> * * *
>
> [10] Equally unclear and unbelievable is why these abductors would brutally murder one occupant of the house, yet leave two living witnesses in and take a third witness with them. If the purpose of taking the defendant was to get her to use the ATM, why would they not kill her after the money was withdrawn? The fact that exactly $400.00 was withdrawn, even though the account had more than that amount of money is very significant. This fact corroborates Dunn's explanation that he did not have the resources to make his $400.00 mortgage payment, but for the defendant's offer to pay him that if she helped him kill her husband. (Tr.I, 116).

(Exhibit B, at 17-18).

In summary, Petitioner's attorney had such strong impeachment evidence based on the witness Geiogomah's drug use and 13 prior felony convictions, that the further disclosure of a deal would not have significantly aided his very effective attack upon her. Moreover, the witness was not terribly clear as to what she saw or smelled, and her testimony was neither critical or believable. As such,

Petitioner has failed to show, as required in the ***Wood v. Bartholomew*** and ***Strickler v. Greene*** cases, that the prior disclosure of the deal with this witness would have been outcome determinative. Her first grounds for relief is without merit.

* * *

[19] Respectfully submitted,

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APPENDIX I

CASE NO. F-97-1709

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

CHARLOTTE ANN MIGNOT,

Appellant,

v.

THE STATE OF OKLAHOMA

Appellee.

BRIEF OF APPELLEE

On Appeal from the District Court of Tulsa County
Case No. CF-96-3314
The Honorable Jesse S. Harris, District Judge

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FILED JANUARY 7, 1999

* * *

[13] PROPOSITION II

THE DEFENDANT'S DUE PROCESS RIGHTS WERE NOT VIOLATED BY THE STATE'S USE OF THE TESTIMONY OF WITNESS MARGIE GEIOGAMAH

The defendant claims that the use of the testimony of witness Margie Geiogamah without disclosing the subsequent dismissal of her felony drug charges in part due to the testimony, violated her due process rights. The Appellee will not minimize the importance of properly disclosing implicit or explicit deals made with witnesses in exchange for testimony. Neither will Appellee quibble with the defendant's accurate quotation of the prosecutor who admitted that the dismissal of Ms. Geiogamah's charges were "consideration after the fact" for the favorable testimony. (12/8/97 Tr. 61, and ***Appellant's Brief***, at 21). Despite raising legitimate areas of concern, this proposition should be rejected because the State had sufficient evidence to support a conviction without Ms. Geiogamah's testimony.

Contrary to the defendant's assertion, Ms. Geiogamah's testimony did not contain the sole nugget of corroboration needed to accept Dunn's version of events. Fortunately for the State, the 200 plus pages of the defendant's trial testimony, coupled with a number of statements she made to authorities and friends proved to be sufficient corroboration of Dunn's testimony to support a guilty verdict. Alternatively, even if Ms. Geiogamah testimony was important, the jury had overwhelming reasons before them to be highly suspicious of Geiogamah's testimony.

* * *

[22] Respectfully submitted,

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